

**Testimony of HB 203, Natural Resources Committee  
Submitted by Kathleen (Kathy) Gallagher, 8965 Sandy Creek Ln., Bozeman, MT 59715**

Mr. Chairman and Members of the Committee:

My name is Kathy Gallagher. My address is 8965 Sandy Creek Lane in Bozeman. I have been a resident of Montana for over 31 years and graduated from Montana State University with a degree in Soil Science/Geology in 1981. My career in groundwater began in 1983 when I worked with the Montana Bureau of Mines and Geology and the U.S. Geological Survey on the Northeast Montana Groundwater Study and Groundwater Reservation – the first in the state. Since that time, I have worked as a hydrogeologist and senior scientist for a number of environmental consulting and engineering firms. Since 1992 I have been an independent consultant and have continued to work on surface and groundwater issues for a variety of clients including the Montana DEQ, US BLM, US EPA, several Montana counties, and a number of private clients. I was also on the steering committee for the formation of the Gallatin Local Water Quality District (GLWQD) and have served on the board, including chairman, for many years. I also served on the City-County Health Board in Gallatin County which sponsored and received a Controlled Groundwater Area designation for the Bozeman Solvent Site.

While I am tempted to use this forum to air all my grievances with the DNRC (or department), I will stick to the bill at hand. I'd like to provide you with my own experience and suggest to you, from what I believe is an experienced viewpoint, on how to proceed in the best interest of the groundwater users of the state.

During the summer of 2000, my neighborhood began having water problems. A number of wells went dry at the mountain front and people living a couple of miles downgradient from the mountain front reported declining output from their wells. As neighbors compared notes, concern grew and a meeting was called to determine our options. We invited the GLWQD to a meeting and initiated a small scale study, mostly to collect water levels near the mountain front. We also discussed possible remedies with Scott Compton of the DNRC water rights field office in Bozeman. At that time, Scott indicated a petition for a Controlled Ground Water Area (CGA) was the only remedy offered in the laws for our situation. So, we (Sypes Canyon Homeowners) began gathering information to satisfy the criteria in the statute. I authored the petition, was one of the petitioners, and provided testimony for the hearing. After appeals, our area was designated a Temporary CGA in April 2002.

During the period our petition was going through the review and hearing process, a water right application for a large subdivision adjacent to our neighborhood was also submitted to DNRC and plat approval was requested from the County. At this time wells drilled into the deeper aquifer in our area were found to be of inadequate water supply and very poor quality. Representatives from our neighborhood met with the developers and consultants to try to work out a win-win situation. Unfortunately, we were told the only remedy they could offer if our wells went dry in the same aquifer they were proposing to develop, would be to sell us water, after we completed the infrastructure. As senior water rights holders in the aquifer in question, this was an unacceptable remedy. So, the water rights application went through the usual procedures, was objected to by area residents, and after a hearing, was denied by the DNRC.

The objectors spent over \$15,000 in legal and expert fees and an additional \$10,000 of in kind expert testimony was provided. The cost by the applicant was significantly higher since they had hired a consulting firm to drill wells and conduct testing. Since the law at that time, in a closed basin, did not require the developer to look too far beyond the subdivision boundaries, little analysis was done that showed impacts outside the boundary. The analysis conducted contained some good data and some analysis that was found, during the hearing, to be incorrect. In addition, despite the development of hundreds of new wells in the area by subdivision development, the Environmental Assessment (EA) prepared by the DNRC field office indicated, with no analysis, that no cumulative effects would occur. While there is a common misconception that domestic water use results in return of all water to the shallow aquifer, this does not take into consideration that the largest volume use of water for most households is lawn and garden irrigation, which occurs during the driest part of the year and does not return to the aquifer. Understanding the consumptive use of the system and identifying the cumulative effects of the consumptive use is a task the DNRC should be conducting under MEPA.

Up until the 2005 Legislature, if an area was designated a temporary CGA, the statutes stated "the department shall commence studies necessary to obtain the facts needed to assist in the designation or modification of a permanent controlled ground water area." Even though DNRC was required by statute to commence studies, we were told that we would be responsible for finding funding. With no help from DNRC we applied for grants from a variety of agencies and private sources to no avail. We raised about \$5,000 from the already exhausted and tapped out neighbors (from the hearing), but it wasn't enough to conduct the study. So we reminded the agency they were required by statute to conduct a study. Data collection finally began a couple of years into the process and, after five years, the study is incomplete. And appropriations continue.

Rather than proposing funding mechanisms to do their job, during the 2005 Legislature, the DNRC, pleading poverty and lack of manpower, managed to get the statute changed so they were in control, but no longer obligated to "commence" a study. This was left up to the petitioners. An additional two years was also granted to drag out the existing studies. HB 203, which appears to be significantly authored by the department, completely removes the department from any responsibility for the study – except to decide, arbitrarily, if there is adequate data to initiate rulemaking. As a hydrogeologist, I can tell you that groundwater studies are expensive – far beyond the reach of most citizens. A decent data collection effort and data analysis would run in the range of \$30,000 to \$50,000 and take several years to conduct. Is it fair to force us to choose between sending our kids to college or funding our retirement so we can understand our groundwater system? I laugh when I think about the outrage Montanan's showed at the \$25 adjudication fee. If the majority of citizens only knew what they could be up against!

Mary Sexton, director of the DNRC, at the Northwest Water Law and Policy Conference held in Bozeman last fall, indicated the CGA statutes were being rewritten to make them more scientific. All this bill does is change the wording of the criteria to make it less user friendly to citizens. The bill is primarily procedural. While the proposed bill may be well intentioned and meant to make a kinder, gentler process for petitioners, all it really does is place a huge burden on the petitioners to provide nebulous "substantial credible information and analysis" to the DNRC,

who then has sole discretion over a rulemaking process. The bill was obviously drafted by the agency to provide relief from their responsibility. I truly can't think of a better way to make sure no more citizen-initiated CGA petitions are submitted to DNRC than the revisions to the statute contained in this bill.

Please remember it is the responsibility and the mission of the DNRC "to help ensure that Montana's land and water resources provide benefits for present and future generations." It is the legislature's job under Article IX, Section 1(3) of the Montana Constitution to "...provide adequate remedies to prevent unreasonable depletion and degradation of natural resources." Our senior water rights are also confirmed in the Constitution (Article IX, Section 3) and our right of participation as citizens is well established in Article I, Section 8 and many state statutes. I'm sincerely hoping we can all make changes to the laws that benefit the citizens of the state, rather than kowtowing to agencies who want to lighten their load.

I urge you to table this bill and go back to the drawing board. A kinder, gentler approach would be to address the funding issue which would benefit not only the DNRC and future petitioners, but also surface and groundwater throughout the state. Potential sources of funding include the DNRC administered Renewable Resource Grant and Loan Program (RRGL). Rather than make non-technical residents of the Temporary Controlled Groundwater Areas beg for funding sources, an agency grant could be drafted and stipulations could be made that a high rank would be given to temporary CGAs. This remedy was relayed to me by a DNRC staff member. A \$50,000 grant would go a long way to determine groundwater conditions in the typical temporary CGA. With funding assured, the DNRC could outsource studies to qualified companies who have term contracts with the state. Many state agencies use these contracts to alleviate manpower shortages in their divisions. Additionally, not a week goes by without the Governor touting a large budget surplus. The DNRC could request additional funding and manpower for their water rights division.

Rulemaking does not enhance the process, which has been on the books as an administrative process since 1961. As relayed by DNRC, rulemaking is being put forth because of two contentious hearings. Currently, MCA 85-2-507 (1) clearly states "the common-law and statutory rules of evidence apply only upon stipulation of all parties." It states all parties. So, for the layperson's benefit, the existing statute clause could be amended to state that all parties must enter into the record a signed statement that they understand the common-law and statutory rules of evidence and whether they agree or disagree to follow the rules of evidence. We did not follow the rules of evidence in our controlled groundwater area hearing.

Again, I urge you to table this bill and go back to a truly kinder, gentler process like that contained in the 2003 CGA statutes. At some point the people of the state and the lawmakers need to admit that water systems do not work by political will. We can not continue to discount long-standing science. Wouldn't it be wonderful to be the legislature that is remembered for making water a priority in Montana. I would be happy to answer any questions or provide additional information to the Committee. This testimony is the tip-of-the-iceberg. Thank you for your time.